

Title	Judicial Arbitration Rules (amend Cal. Rules of Court, rules 225, 1580.3, and 1600–1618)
Summary	These proposed amendments are intended to generally update the judicial arbitration rules by deleting outdated language and reflecting current case management practices and to dovetail the rules with pending amendments to the judicial arbitration statutes.
Source	Civil and Small Claims Advisory Committee
Staff	Heather Anderson, Staff Attorney, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>California statutes establish a court-connected, nonbinding arbitration program for civil cases valued at \$50,000 or less, known as judicial arbitration (Code Civ. Proc., § 1141 et seq.). Rules 1600–1618 of the California Rules of Court set out the administrative structure and procedures for this program.</p> <p>While these rules have been amended periodically, they have not been updated since all of the trial courts unified, and therefore they contain outdated references to municipal courts. These rules also contain procedural provisions that have not been updated to reflect current case management practices and procedures and rule 1618 contains provisions regarding notifying the court about a settlement that differ from rule 225. In addition, Assembly Bill 1712, which is currently pending in the Legislature, would update the judicial arbitration statutes (a copy of the relevant portions of this bill are attached).</p> <p>These proposed rule amendments would update the judicial arbitration rules to delete outdated references to the municipal courts, to reflect current case management practices, and to make the rules correspond with pending amendments to the judicial arbitration statutes. In order to make the rules easier to understand, some rules would be reorganized to consolidate provisions relating to the same topic and new headings also would be added. The main changes being proposed would do the following:</p> <p><i>Consolidate rules regarding what cases are subject to arbitration.</i> Currently, rule 1600 addresses what types of cases are subject to arbitration and rule 1600.5 addresses cases that are exempt from arbitration. These rules would be consolidated into one rule, proposed rule 1601. In addition, the exemption for family law cases in current rule 1600.5(e) would be amended to recognize that Family Code</p>

section 2554 permits certain disputes involving marital property to be referred to judicial arbitration.

Clarify that an election to arbitrate must be made by all plaintiffs.

Currently, rules 1600(b) and 1601 refer to an election to arbitrate filed by *a* plaintiff. In proposed rules 1601(a)(5) and 1602(b), this would be changed to refer to an election by *all* plaintiffs. The statutory provision concerning plaintiff elections to arbitrate does not directly address elections in cases involving more than one plaintiff; Code of Civil Procedure section 1141.12(b) provides that a case must be submitted to arbitration “upon filing of an election by *the* plaintiff, any cause in which *the* plaintiff agrees that the arbitration award shall not exceed” \$50,000. However, it seems appropriate that all plaintiffs be given a say with regard to this election, particularly since, under rule 1600.5(h) (which would become 1601(b)(8) in the amended rules), actions involving multiple causes of action are exempt from judicial arbitration if the court determines that the amount in controversy *as to any given cause of action* exceeds \$50,000. If only one plaintiff can make this election, cases in which other plaintiffs have causes of action valued at over \$50,000 may be inappropriately referred to arbitration.

Update provisions regarding determining the amount in controversy to refer to case management conferences or review under rule 212. To correspond with the pending amendments to the judicial arbitration statutes and to reflect current case management practices, rules 1602 and 1605 would be amended to state that the amount in controversy is determined at the first case management conference or review under rule 212 that takes place after all names parties have appeared or defaulted.

Replace the requirement for an arbitration administrative committee with a requirement for a broader ADR committee. Currently, rule 1603 requires courts that, by statute, must have judicial arbitration programs to have an arbitration administrative committee made up of certain specified members. To reflect the fact that many courts have multiple ADR programs, not just judicial arbitration, this provision would be deleted and replaced with a new provision in rule 1530.3 requiring such courts to establish an ADR committee and providing for a broader committee membership.

Allow inactive members of the bar to serve on arbitration panels. Rule 1604 currently requires that arbitration panels be composed of *active*

members of the bar, retired court commissioners, and retired judges. This proposal would allow both active and inactive attorneys to serve on the panel. Active bar membership is not required by the judicial arbitration statutes, nor is it required by this rule for either retired commissioners or retired judges.

Consolidate provisions relating to selection of an arbitrator.

Currently, rules 1602, 1605, and 1605.5 all include provisions addressing selection of an arbitrator. This proposal would consolidate these provisions into a single rule, rule 1605. In addition, duplicative provisions relating to local arbitrator selection procedures would be deleted.

Require that stipulations to non-panel arbitrators be accompanied by the arbitrator's consent to serve and oath. Currently, rule 1602(a) provides that a person selected as an arbitrator by stipulation is responsible for filing a consent to serve and an oath for the selection to become effective. To prevent delay in the arbitrator appointment process, rule 1605 would instead require that when parties stipulate to an arbitrator who is not on the court's panel, the arbitrator's consent to serve and oath must be attached to the stipulation.

Eliminate automatic resetting for arbitration if a second arbitrator declines to serve or if an arbitrator does not hold a hearing within 90 days. Currently, subdivisions (b) and (c) of rule 1605 have somewhat overlapping provisions; (b) requires the arbitration administrator to place matters back on the arbitration hearing list if an arbitrator declines to serve or does not hold a hearing within 90 days, while (c) permits or, in some circumstances, requires the administrator to certify the case back to the court. The amendments to rule 1605 would permit the administrator to place the case back on the arbitration hearing list if the first arbitrator declined to serve, but, out of concerns about delaying the case, would require the administrator to certify the case back to the court if either a second arbitrator declined to serve or the arbitrator failed to complete the arbitration hearing within 90 days of his or her appointment.

Authorize the ADR administrator to review arbitrator disqualification.

Currently, rule 1606(d) authorizes only the administrative committee or the presiding judge to review an arbitrator disqualification. The amendments would allow the court to order its staff to conduct an initial review to determine whether a disqualification of an arbitrator in a particular case involves issues that might warrant the arbitrator's

removal from the panel.

Consolidate provisions relating to arbitration hearings. Currently, rules 1605 and 1611 both contain provision regarding arbitration hearings. The amendments would consolidate those provisions in one rule and place that rule in a more logical sequence as new rule 1607. In addition, the rule would be amended to eliminate the requirement that hearings be scheduled so they would not be completed sooner than 35 days after appointment of the arbitrator because such early arbitration hearings are already effectively prevented by the requirement that the hearing not be scheduled sooner than 30 days after the arbitrator provides notice of the hearing date. The amendments would also permit the parties and arbitrator to agree to an earlier hearing date. Finally, the sentence in current rule 1611 that provides that a hearing is completed upon the filing of the arbitrator's award would be eliminated because it appears to conflict with the requirement in rule 1616(b) that the arbitrator file the award "within 10 days after the conclusion of the arbitration hearing."

Make the requirements regarding notifying the court and arbitrators of settlement consistent with rule 225. Currently, rule 1618 makes *both parties* responsible for notifying the court of a settlement, and rule 1609 refers to a notice of settlement signed by the parties or their counsel. These requirements are inconsistent with rule 225's requirement that *the plaintiff* notify the court of any settlement. Rules 1609 and 1618 would be amended to delete these inconsistent provisions. In addition, rule 225 would be amended to make the plaintiff responsible for paying the compensation of ADR neutrals in the event that a plaintiff fails to give timely notice of settlement and to make the timeframe for giving oral notification clearer.¹

In addition to any comments on these proposed changes, we would also welcome your comments about whether rule 1610(b) (former 1609) should be amended to delete the authorization for ex parte communication for purposes of requesting a continuance.

Attachment

¹ Please note that additional amendments to other portions of rule 225 are also being circulated for comment as part of another proposal.

Rules 225, 1580.3, and 1600–1618 of the California Rules of Court would be amended effective January 1, 2003, to read:

Rule 225. Duty to notify court and others of settlement or stay

(a) [Notice of settlement]

(1) If a case is settled or otherwise disposed of, the plaintiff must immediately file written notice of the settlement or other disposition with the court and serve the notice on all parties and any arbitrator or other court-connected ADR neutral involved in the case. The plaintiff must also immediately give oral notice to all of the above if a hearing, conference, or trial is ~~imminent~~ scheduled to take place within 10 days.

(2) If the plaintiff does not notify an arbitrator or other court-connected ADR neutral involved in the case of a settlement at least two days before a scheduled hearing or session with that arbitrator or neutral, the court may order the plaintiff to compensate the arbitrator or other neutral for the scheduled hearing time. The amount of compensation ordered by the court must not exceed the maximum amount of compensation the arbitrator or neutral would have been entitled to receive for their services as an arbitrator or neutral at the scheduled hearing or session.

(b) – (d) * * *

Rule 1580.3. ADR program administration

(a) [ADR program administrator] The presiding judge in each trial court ~~shall~~ must designate the clerk or executive officer, or another court employee who is knowledgeable about ADR processes to serve as ADR program administrator. The duties of the ADR program administrator ~~shall~~ must include:

~~(a)~~(1) Developing informational material concerning the court's ADR programs;

~~(b)~~(2) Educating attorneys and litigants about the court's ADR programs;

~~(c)~~(3) Supervising the development and maintenance of any panels of ADR neutrals maintained by the court; and

~~(d)~~(4) Gathering statistical and other evaluative information concerning the court's ADR programs.

1
2 **(b) [ADR committee]**
3

4 (1) In each superior court that has 18 or more authorized judges, there must
5 be an ADR committee. The members of the ADR committee must
6 include, insofar as may be practicable:
7

8 (A) The presiding judge or a judge designated by the presiding judge;
9

10 (B) One or more other judges designated by the presiding judge;
11

12 (C) The ADR program administrator;
13

14 (D) Two or more active members of the State Bar chosen by the
15 presiding judge as representatives of those attorneys who regularly
16 represent parties in general civil cases before the court. The
17 committee should include an equal number of attorneys who
18 represent plaintiffs and who represent defendants in these cases;
19

20 (E) One or more members of the court's panel of arbitrators chosen by
21 the presiding judge; and
22

23 (F) If the court makes a list of any ADR neutrals other than arbitrators
24 available to litigants, one or more neutrals chosen from that list by
25 the presiding judge.
26

27 (2) Any other court may by rule establish an ADR committee as provided in
28 (b)(1). Otherwise, the presiding judge or a judge designated by the
29 presiding judge must perform the functions and have the powers of an
30 ADR committee as provided in these rules.
31

32 (3) The members of the ADR committee must serve for terms of two years,
33 may be reappointed, and may be removed by the presiding judge.
34

35 (4) The powers of the ADR committee include those powers relating to the
36 court's judicial arbitration program specified in rule 1603(b).
37
38
39

1 CHAPTER 3. Judicial Arbitration Rules

2
3 Title Five, Special Rules for Trial Courts—Division III, Alternative Dispute
4 Resolution Rules for Civil Cases—Chapter 3, Judicial Arbitration Rules
5

6 ~~Rule 1600. Actions subject to arbitration~~ Applicability of rules

7 ~~Rule 1600.1-1601. Applicability of rules~~ Cases subject to and exempt from arbitration

8 ~~Rule 1600.5. Actions exempt from arbitration~~

9 ~~Rule 1601-1602. Stipulations and requests for~~ Assignment to arbitration

10 ~~Rule 1602. Designation of arbitrator by stipulation~~

11 ~~Rule 1603. Arbitration program administration~~

12 ~~Rule 1604. Composition of the~~ Panels of arbitrators

13 ~~Rule 1605. Assignment of cases~~ Selection of arbitrator

14 ~~Rule 1605.5. Local procedures for selecting arbitrator~~

15 ~~Rule 1606. Disqualification for conflict of interest~~

16 ~~Rule 1607. Hearings; notice; when and where held~~

17 ~~Rule 1607-1608. Continuances~~

18 ~~Rule 1608-1609. Arbitrator's fees~~

19 ~~Rule 1609-1610. Communication with the arbitrator~~

20 ~~Rule 1610-1611. Representation by counsel; proceedings when party absent~~

21 ~~Rule 1611. Hearings; notice; when and where held~~

22 ~~Rule 1612. Discovery~~

23 ~~Rule 1613. Rules of evidence at hearing~~

24 ~~Rule 1614. Conduct of the hearing~~

25 ~~Rule 1615. The award; entry as judgment; motion to vacate~~

26 ~~Rule 1616. Trial after arbitration~~

27 ~~Rule 1617. Arbitration not pursuant to rules~~

28 ~~Rule 1618. Settlement of case~~

29
30
31 ~~Rule 1600. 1600.~~ Applicability of rules

32
33 The rules in this chapter (commencing with rule 1600) apply if Code of Civil
34 Procedure, part 3, title 3, chapter 2.5 (commencing with section 1141.10) is in
35 effect.
36

37 ~~Rule 1600 1601.~~ Cases subject to and exempt from arbitration

38
39 ~~(a) [Cases subject to arbitration]~~ Except as provided in ~~rule 1600.5~~ (b), the
40 following ~~actions shall~~ cases must be arbitrated:

41
42 ~~(e)(1)~~ (1) In each superior court with 18 or more authorized judges, ~~or 10 or more~~
43 ~~authorized judges in a county in which there is at least one municipal~~

1 court, all civil ~~actions~~ cases where the amount in controversy does not
2 exceed \$50,000 as to any plaintiff;

3
4 ~~(d)~~(2) In each superior court with fewer than 18 authorized judges, ~~or fewer~~
5 ~~than 10 authorized judges in a county in which there is at least one~~
6 ~~municipal court~~ that so provides by local rule, all ~~actions~~ unlimited civil
7 cases where the amount in controversy does not exceed \$50,000 as to
8 any plaintiff;

9
10 ~~(e)~~(3) All limited civil cases in courts that so provide by local rule;

11
12 ~~(a)~~(4) Upon stipulation, any ~~action~~ case in any court, regardless of the amount
13 in controversy; and

14
15 ~~(b)~~(5) Upon filing of an election by ~~a~~ all plaintiffs, any ~~action~~ case in any court
16 in which ~~the~~ each plaintiff agrees that the arbitration award ~~shall~~ will
17 not exceed \$50,000 as to that plaintiff.

18
19 **Rule 1600.5.(b) [Actions Cases exempt from arbitration]** The following ~~actions~~
20 cases are exempt from arbitration:

21
22 ~~(a)~~(1) ~~Actions~~ Cases that include a prayer for equitable relief that is not
23 frivolous or insubstantial;

24
25 ~~(b)~~(2) Class actions;

26
27 ~~(e)~~(3) Small claims ~~actions~~ cases or trials de novo on appeal from the small
28 claims court;

29
30 ~~(d)~~(4) Unlawful detainer proceedings;

31
32 ~~(e)~~(5) Family Law Act proceedings except as provided in Family Code section
33 2554;

34
35 ~~(f)~~(6) Any ~~action~~ case otherwise subject to arbitration that is found by the
36 court not to be ~~not~~ amenable to arbitration on the ground that arbitration
37 would not reduce the probable time and expense necessary to resolve the
38 litigation;

39
40 ~~(g)~~(7) Any category of ~~actions~~ cases otherwise subject to arbitration but excluded
41 by local rule as not amenable to arbitration on the ground that, under the
42 circumstances relating to the particular court, arbitration of such cases would

1 not reduce the probable time and expense necessary to resolve the litigation;
2 and

- 3
4 ~~(h)(8)~~ Actions Cases involving multiple causes of action or a cross-complaint if the
5 court determines that the amount in controversy as to any given cause of action
6 or cross-complaint exceeds \$50,000.
7

8 **Rule ~~1601~~ 1602. Stipulations and requests for Assignment to arbitration**
9

- 10 (a) **[Stipulations to arbitration]** When the parties stipulate to arbitration, the ~~action~~
11 case must be set for arbitration forthwith. The stipulation must be filed no later
12 than the time the initial case management statement is filed, unless the court
13 orders otherwise.
14
15 (b) **[Requests for arbitration]** Upon written request of ~~a~~ all plaintiffs to submit ~~an~~
16 action a case to arbitration, the ~~action case~~ must be set for arbitration forthwith,
17 subject to a motion by defendant for good cause to delay the arbitration
18 hearing. The request must be filed no later than the time the initial case
19 management statement is filed, unless the court orders otherwise.
20
21 (c) **[Cross-actions]** ~~An action~~ A case involving a cross-complaint where ~~a~~ all
22 plaintiffs ~~has~~ have elected to arbitrate must be removed from the list of cases
23 assigned to arbitration if, upon motion of the cross-complainant made within 15
24 days after notice of the election to arbitrate, the court determines that the
25 amount in controversy relating to the cross-complaint exceeds \$50,000.
26
27 (d) **[Case management conference]** Absent a stipulation or a request by all
28 plaintiffs to submit to arbitration, ~~actions cases~~ must be set for arbitration ~~at the~~
29 ~~initial case management conference or no later than 90 days before the date set~~
30 ~~for trial, whichever occurs first. when the court determines that the amount in~~
31 controversy does not exceed \$50,000. The amount in controversy must be
32 determined at the first case management conference or review under rule 212
33 that takes place after all named parties have appeared or defaulted.
34

35 **Rule 1603. Arbitration program administration**
36

- 37 (a) **[Arbitration administrator]** The presiding judge ~~shall~~ must designate the
38 ~~clerk, executive officer or other court employee~~ ADR administrator selected
39 under rule 1580.3 to serve as arbitration administrator. The arbitration
40 administrator ~~shall~~ must supervise the selection of arbitrators for the cases on
41 the arbitration hearing list, generally supervise the operation of the arbitration
42 program and perform any additional duties delegated by the presiding judge.
43

1 ~~(b) In each superior court having 18 or more authorized judges, or 10 or more~~
2 ~~authorized judges in a county in which there is at least one municipal court,~~
3 ~~there shall be an administrative committee composed of, insofar as may be~~
4 ~~practicable:~~

5
6 ~~(1) the presiding judge or a judge designated by the presiding judge;~~
7

8 ~~(2) the arbitration administrator;~~
9

10 ~~(3) two or more active members of the State Bar chosen by the presiding~~
11 ~~judge as representative of those attorneys who regularly represent~~
12 ~~plaintiffs in personal injury tort actions before the court;~~
13

14 ~~(4) an equal number of active members of the State Bar chosen by the~~
15 ~~presiding judge as representative of those attorneys who regularly~~
16 ~~represent defendants in personal injury tort actions before the court.~~
17

18 ~~(5) three or more active members of the State Bar chosen by the presiding~~
19 ~~judge as representative of attorneys who regularly try other civil cases.~~
20

21 It may also include:

22
23 ~~(6) three or more active members of the State Bar chosen by the presiding~~
24 ~~judge as representative of attorneys who regularly try cases before the~~
25 ~~court in any specialized area for which the presiding judge establishes a~~
26 ~~specialized arbitration panel.~~
27

28 ~~The members of the administrative committee shall serve for terms of two years;~~
29 ~~they may be reappointed, and may be removed by the presiding judge.~~
30

31 ~~(e) Any other court may by rule establish an administrative committee as provided~~
32 ~~in subdivision (b). Otherwise, the presiding judge or a judge designated by the~~
33 ~~presiding judge shall perform the functions and have the powers of an~~
34 ~~administrative committee as provided in these rules.~~
35

36 ~~(d)(b)~~ **[Responsibilities of ADR committee]** The administrative ADR committee
37 established under rule 1580.3 shall have power is responsible for:
38

39 ~~(1) to select its chairman and provide for its procedures;~~
40

41 ~~(2)(1) to appoint~~ Appointing the panels of arbitrators provided for in rule
42 1604;
43

1 ~~(3)(2) to remove~~ Removing a person from a panel of arbitrators;

2
3 ~~(4)(3) to establish~~ Establishing procedures for selecting an arbitrator not
4 inconsistent with these rules or local court rules; and

5
6 ~~(5)(4) to review~~ Reviewing the administration and operation of the arbitration
7 program periodically and makeing recommendations to the Judicial
8 Council as it deems appropriate to improve the program, promote the ends
9 of justice, and serve the needs of the community.

10
11 **Rule 1604. Composition of the Panels of arbitrators**

12
13 (a) **[Creation of panels]** Every court must have a panel of arbitrators for personal
14 injury cases, and such additional panels as the presiding judge may, from time
15 to time, determine are needed.

16
17 (b) **[Composition of panels]** The panels of arbitrators must be composed of active
18 or inactive members of the State Bar, retired court commissioners who were
19 licensed to practice law prior to their appointment as a commissioner, and
20 retired judges. A former California judicial officer is not eligible for the panel
21 of arbitrators unless he or she is an active or inactive member of the State Bar.

22
23 ~~Each person appointed serves as a member of a panel of arbitrators at the~~
24 ~~pleasure of the administrative committee. A person may be on arbitration~~
25 ~~panels in more than one county.~~

26
27 (c) **[Responsibilities of ADR committee]** The administrative ADR committee is
28 responsible for determining the size and composition of each panel of
29 arbitrators. The number of attorneys on a personal injury panel who usually
30 represent plaintiffs must, to the extent feasible, equal the number of those who
31 usually represent defendants.

32
33 (d) **[Service on panel]** Each person appointed serves as a member of a panel of
34 arbitrators at the pleasure of the ADR committee. A person may be on
35 arbitration panels in more than one county. An appointment to a panel is
36 effective when the person appointed:

37
38 (1) Agrees to serve;

39
40 (2) Certifies that he or she is aware of and will comply with applicable
41 provisions of canon 6 of the Code of Judicial Ethics and these rules; and
42

(3) Files an oath or affirmation to justly try all matters submitted to him or her.

- (e) **[Panel lists]** Lists showing the names of panel arbitrators available to hear cases must be available for public inspection in the ~~arbitration~~ ADR program administrator's office.

Rule 1605. ~~Assignment of cases~~ Selection of the arbitrator

Rule 1602.(a) ~~[Designation of arbitrator~~ Selection by stipulation By stipulation, the parties may ~~by stipulation designate~~ select any person to serve as arbitrator. If the parties select a person who is not on the court's arbitration panel to serve as the arbitrator, the designation stipulation shall will be effective only if: (1) the designated selected person files completes a written consent to serve and the oath required of panel arbitrators under these rules within 15 days of the date of stipulation; and (2) both the consent and the oath are attached to the stipulation. A stipulation may specify the maximum amount of the arbitrator's award.

(a)(b) [Selection absent stipulation or local procedures] ~~Unless~~ If the arbitrator has not been designated selected by stipulation and the court has not adopted local rules or procedures for the selection of the arbitrator as permitted under (c), the arbitrator will be selected as follows:

- (1) Within 15 days after a case is placed on the arbitration hearing list, the administrator shall select at random at least three names from the appropriate panel in accordance with procedures established by the administrative committee. The procedures shall also provide a method by which each party or side may within 10 days reject in writing an equal number of names so that, if each party or side rejects the maximum number of names permitted, a single name will remain and that arbitrator will be deemed appointed. If at the end of 10 days two or more names have not been rejected, the administrator shall appoint at random one of the remaining arbitrators.

~~The local procedures shall assure that an arbitrator is appointed within 30 days from the submission of a case to arbitration pursuant to rule 1600(a), (d) or (e).~~

~~In the absence of local procedures to the contrary:~~

- ~~(4)—the administrator shall~~ must determine the number of clearly adverse sides in the case; in the absence of a cross-complaint bringing in a new party, the administrator may assume there are two sides. A dispute as to the number or identity of sides ~~shall~~ must be decided by the presiding judge

1 in the same manner as are disputes in determining sides entitled to
2 peremptory challenges of jurors.

- 3
- 4 (2) The administrator ~~shall~~ must select at random a number of names equal to
5 the number of sides, plus one.
- 6
- 7 (3) The list of randomly selected names ~~shall~~ must be mailed to counsel for
8 the parties, and each side has 10 days from the date of mailing to file a
9 rejection, in writing, of no more than one name on the list; if there are two
10 or more parties on a side, they must join in the rejection of a single name.
- 11
- 12 (4) Promptly on the expiration of the 10-day period, the administrator ~~shall~~
13 must appoint, at random, one of the persons on the list whose name was
14 not rejected, if more than one name remains.
- 15
- 16 (5) The administrator ~~shall~~ must assign the case to the arbitrator appointed
17 and ~~shall~~ must give notice of the appointment to the arbitrator and to all
18 parties. ~~Within 15 days after the appointment of the arbitrator, the~~
19 ~~arbitrator shall notify each party and the administrator in writing of the~~
20 ~~date, time, and place of the arbitration hearing.~~
- 21

22 **Rule 1605.5.(c) [Local selection procedures for selecting arbitrator]** In lieu of
23 the procedure in ~~4605(b)~~, a court ~~having~~ that has an arbitration program may,
24 by local rule or by procedures adopted by its administrative ADR committee,
25 ~~pursuant to rule 1603(d)(4)~~ establish any fair method of ~~assigning a case to~~
26 ~~selecting~~ an arbitrator that: (1) affords each side an opportunity to challenge at
27 least one listed arbitrator peremptorily; and (2) ensures that an arbitrator is
28 appointed within 30 days from the submission of a case to arbitration. The
29 local rule or procedure may require that all steps leading to the selection of the
30 arbitrator take place during or immediately following the case management
31 conference or review under rule 212 at which the court determines the amount
32 in controversy and the suitability of the case for arbitration. ~~The court may~~
33 ~~require that counsel with appropriate authority attend the conference.~~

34 ~~A copy of the local rule or procedure adopted pursuant to this rule shall~~
35 ~~accompany the notice of the hearing to determine the amount in controversy.~~

36

37 **(b)(d) [Procedure if first arbitrator declines to serve]** If the first arbitrator
38 selected declines to serve or does not complete the hearing within 90 days after
39 the date of the assignment of the case to him or her, including any time due to
40 continuances granted under rule 1607, the administrator ~~shall~~ must vacate the
41 appointment of the arbitrator and ~~shall~~ may either:

42

1 (1) Return the case to the top of the arbitration hearing list, restore the
2 arbitrator's name to the list of those available for selection to hear cases,
3 and appoint a new arbitrator pursuant to subdivision (a). The 90-day
4 period may be extended only by order of the court upon the motion of a
5 party as provided in rule 1607(b); or

6
7 (2) Certify the case to the court.
8

9 (e)(e) **[Procedure if second arbitrator declines to serve or hearing is not timely**
10 **held]** ~~When a case is returned under subdivision (b) to the arbitration hearing~~
11 ~~list after assignment to the first arbitrator, the administrator may certify the~~
12 ~~case to the court. When the case is returned after assignment to the~~ If the
13 ~~second arbitrator selected declines to serve or if the arbitrator does not~~
14 ~~complete the hearing within 90 days after the date of the assignment of the case~~
15 ~~to him or her, including any time due to continuances granted under rule 1607,~~
16 ~~however,~~ the administrator ~~shall~~ must certify the case to the court.
17

18 (f) **[Cases certified to court]** If a case is certified to the court under either (d) or
19 ~~(e), the court shall~~ must summon the parties or their counsel. If the inability to
20 hold a hearing is due to the neglect or lack of cooperation of a party who
21 elected or stipulated for arbitration, the case ~~shall~~ must be removed from the
22 arbitration hearing list and restored to the civil active list; In all other
23 circumstances, cases may be ordered reassigned for arbitration, or the court
24 may make any other appropriate order to expedite disposition of the case.
25

26 **Rule 1606. Disqualification for conflict of interest**
27

28 (a) **[Arbitrator's duty to disqualify himself or herself]** The arbitrator must
29 determine whether any cause exists for disqualification upon any of the
30 grounds set forth in section 170.1 of the Code of Civil Procedure governing the
31 disqualification of judges. If any member of the arbitrator's law firm would be
32 disqualified under subdivision (a)(4) of section 170.1, the arbitrator is
33 disqualified. Unless the ground for disqualification is disclosed to the parties in
34 writing and is expressly waived by all parties in writing, the arbitrator must
35 promptly notify the administrator of any known ground for disqualification and
36 another arbitrator must be selected as provided in rule 1605.
37

38 (b) **[Disclosures by arbitrator]** In addition to any other disclosure required by
39 law, no later than five days prior to the deadline for parties to file a motion for
40 disqualification of the arbitrator under Code of Civil Procedure section 170.6
41 or, if the arbitrator is not aware of his or her appointment or of a matter subject
42 to disclosure at that time, as soon as practicable thereafter, an arbitrator must
43 disclose to the parties:

- 1
- 2 (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and
- 3 (D)(2)(g) of canon 6 of the Code of Judicial Ethics; and
- 4
- 5 (2) Any significant personal or professional relationship the arbitrator has or
- 6 has had with a party, attorney, or law firm in the instant case, including
- 7 the number and nature of any other proceedings in the past 24 months in
- 8 which the arbitrator has been privately compensated by a party, attorney,
- 9 law firm, or insurance company in the instant case for any services,
- 10 including, but not limited to, service as an attorney, expert witness, or
- 11 consultant or as a judge, referee, arbitrator, mediator, settlement
- 12 facilitator, or other alternative dispute resolution neutral.
- 13
- 14 (c) **[Request for disqualification]** A copy of any request by a party for the
- 15 disqualification of an arbitrator pursuant to section 170.1 or 170.6 of the Code
- 16 of Civil Procedure must be sent to the administrator.
- 17
- 18 (d) **[Arbitrator's failure to disqualify himself or herself]** Upon motion of any
- 19 party, made as promptly as possible under sections 170.1 and 1141.18(d) of the
- 20 Code of Civil Procedure before the conclusion of arbitration proceedings, the
- 21 appointment of an arbitrator to a case must be vacated if the court finds that:
- 22 (1) the party has demanded that the arbitrator disqualify himself or herself; (2)
- 23 ~~and~~ the arbitrator has failed to do so; and (3) any of the grounds specified in
- 24 section 170.1 exists. The ~~arbitration~~ ADR administrator must return the case to
- 25 the top of the arbitration hearing list and must appoint a new arbitrator. The
- 26 disqualified arbitrator's name must be returned to the list of those available for
- 27 selection to hear cases, unless the court orders that the circumstances of the
- 28 disqualification be reviewed; ~~under rules 1603(d)(3) and 1604(b),~~ by the ADR
- 29 administrator, the administrative ADR committee, the presiding judge, or a
- 30 judge designated by the presiding judge, for appropriate action.
- 31

32 **Rule ~~1611~~ 1607. Hearings; notice; when and where held**

33

- 34 (a) **[Setting hearing; notice]** Within 15 days after the appointment of the
- 35 arbitrator, the arbitrator shall must set the date, time, and place of the
- 36 arbitration hearing, and notify each party and the administrator in writing of
- 37 the date, time, and place set. shall give notice of the hearing date to the parties
- 38 at least 30 days prior to the date set for the arbitration hearing.
- 39
- 40 (b) **[Date of hearing; limitations]** ~~No hearings shall be set for Saturdays or legal~~
- 41 ~~holidays, Except upon the agreement of all parties and the arbitrator-, the~~
- 42 arbitration hearing date must not be set:
- 43

1 (1) Earlier than 30 days after the date the arbitrator sends the notice of the
2 hearing under (a); or

3
4 (2) On Saturdays, Sundays, or legal holidays.

5
6 (c) **[Hearing completion deadline]** ~~The hearings shall~~ must be scheduled so as to
7 be completed ~~not sooner than 35 days, nor no~~ later than 90 days from the date
8 of the assignment of the case to the arbitrator, including any time due to
9 continuances granted under rule ~~1607~~ 1608.

10
11 (d) **[Hearing location]** ~~The hearings shall~~ must take place in appropriate facilities
12 provided by the court or selected by the arbitrator. ~~As used in this paragraph, a~~
13 ~~hearing is completed upon filing of the arbitrator's award with the clerk~~
14 ~~pursuant to rule 1615(b).~~

15
16 **Rule ~~1607~~ 1608. Continuances**

17
18 (a) **[Stipulation to continuance; consent of arbitrator]** Except as provided in ~~this~~
19 ~~rule (c)~~, the parties may stipulate to a continuance in the case, with the consent
20 of the assigned arbitrator. An arbitrator ~~shall~~ must consent to a request for a
21 continuance if it appears that good cause exists. Notice of the continuance ~~shall~~
22 must be sent to the ~~arbitration~~ ADR administrator.

23
24 (b) **[Court grant of continuance]** If the arbitrator declines to give consent to a
25 continuance, upon the motion of a party and for good cause shown under the
26 standards recommended in section 9 of the Standards of Judicial
27 Administration, the court may grant a continuance of the arbitration hearing. In
28 the event the court grants the motion, the party who requested the continuance
29 ~~shall~~ must notify the arbitrator and the arbitrator ~~shall~~ must reschedule the
30 hearing, giving notice to all parties to the arbitration proceeding.

31
32 (c) **[Limitation on length of continuance]** An arbitration hearing ~~shall~~ must not be
33 continued to a date later than 90 days after the assignment of the case to the
34 arbitrator, including any time due to continuances granted under this rule, except
35 by order of the court upon the motion of a party as provided in ~~subdivision~~ (b).
36
37

1 **Rule ~~1608~~ 1609. Arbitrator's fees**

- 2
- 3 (a) **Filing of award or notice of settlement required** The arbitrator's award, or
- 4 a notice of settlement ~~signed by the parties or their counsel~~, must be timely
- 5 filed with the clerk of the court before a fee may be paid to the arbitrator.
- 6
- 7 (b) **Exceptions for good cause** On the arbitrator's verified ex parte application,
- 8 the court may for good cause authorize payment of a fee:
- 9
- 10 (1) If the arbitrator devoted a substantial amount of time to a case that was
- 11 settled without a hearing; or
- 12
- 13 (2) If the award was not timely filed.
- 14
- 15 (c) **Arbitrator's fee statement** The arbitrator's fee statement ~~shall~~ must be
- 16 submitted to the administrator promptly upon the completion of the arbitrator's
- 17 duties, and ~~shall~~ must set forth the title and number of the cause arbitrated, the
- 18 date of the arbitration hearing, and the date the award or settlement was filed.
- 19

20 **Rule ~~1609~~ 1610. Communication with the arbitrator**

- 21
- 22 (a) **Disclosure of settlement offers prohibited** No disclosure of any offers of
- 23 settlement made by any party ~~shall~~ may be made to the arbitrator prior to the
- 24 filing of the award.
- 25
- 26 (b) **Ex parte communication prohibited** There ~~shall~~ must be no ex parte
- 27 communication by counsel or the parties with the arbitrator or a potential
- 28 arbitrator except for the purpose of scheduling the arbitration hearing or
- 29 requesting a continuance.
- 30

31 **Rule ~~1610~~ 1611. Representation by counsel; proceedings when party absent**

- 32
- 33 (a) **Representation by counsel** A party to the arbitration has a right to be
- 34 represented by an attorney at any proceeding or hearing in arbitration, but this
- 35 right may be waived. A waiver of this right may be revoked, but if revoked, the
- 36 other party is entitled to a reasonable continuance for the purpose of obtaining
- 37 counsel.
- 38
- 39 (b) **Proceedings when party absent** The arbitration may proceed in the absence
- 40 of any party who, after due notice, fails to be present and to obtain a
- 41 continuance. An award ~~shall~~ must not be based solely upon the absence of a
- 42 party. In the event of a default by defendant, the arbitrator ~~shall~~ must require

1 the plaintiff to submit such evidence as may be appropriate for the making of
2 an award.

3
4 **Rule 1612. Discovery**

5
6 The parties to the arbitration ~~shall~~ have the right to take depositions and to obtain
7 discovery, and to that end may exercise all of the same rights, remedies, and
8 procedures, and ~~shall be~~ are subject to all of the same duties, liabilities, and
9 obligations as provided in part 4, title 3, chapter 3 of the Code of Civil Procedure,
10 except that all discovery ~~shall~~ must be completed not later than 15 days prior to the
11 date set for the arbitration hearing unless the court, upon a showing of good cause,
12 makes an order granting an extension of the time within which discovery must be
13 completed.

14
15 **Rule 1613. Rules of evidence at hearing**

16
17 (a) **[Presence of arbitrator and parties]** All evidence ~~shall~~ must be taken in the
18 presence of the arbitrator and all parties, except where any of the parties has
19 waived the right to be present or is absent after due notice of the hearing.

20
21 (b) **[Application of civil rules of evidence]** The rules of evidence governing civil
22 ~~actions~~ cases apply to the conduct of the arbitration hearing, except:

23
24 (1) Any party may offer written reports of any expert witness, medical
25 records and bills (including physiotherapy, nursing, and prescription
26 bills), documentary evidence of loss of income, property damage repair
27 bills or estimates, police reports concerning an accident which gave rise to
28 the case, other bills and invoices, purchase orders, checks, written
29 contracts, and similar documents prepared and maintained in the ordinary
30 course of business.

31
32 (A) The arbitrator ~~shall~~ must receive them in evidence if copies have
33 been delivered to all opposing parties at least 20 days prior to the
34 hearing.

35
36 (B) Any other party may subpoena the author or custodian of the
37 document as a witness and examine the witness as if under cross-
38 examination.

39
40 (C) Any repair estimate offered as an exhibit, and the copies delivered to
41 opposing parties, shall be accompanied (i) by a statement indicating
42 whether or not the property was repaired, and, if it was, whether the
43 estimated repairs were made in full or in part, and (ii) by a copy of

1 the receipted bill showing the items of repair made and the amount
2 paid.

3
4 (D) The arbitrator shall not consider any opinion as to ultimate fault
5 expressed in a police report.

6
7 (2) The written statements of any other witness may be offered and ~~shall~~ must
8 be received in evidence if:

9
10 (i)(A) They are made by affidavit or by declaration under penalty of
11 perjury;

12
13 (ii)(B) Copies have been delivered to all opposing parties at least 20 days
14 prior to the hearing; and

15
16 (iii)(C) No opposing party has, at least 10 days before the hearing,
17 delivered to the proponent of the evidence a written demand that the
18 witness be produced in person to testify at the hearing. The arbitrator
19 ~~shall~~ must disregard any portion of a statement received pursuant to
20 this rule that would be inadmissible if the witness were testifying in
21 person, but the inclusion of inadmissible matter does not render the
22 entire statement inadmissible.

23
24 (3) (A) The deposition of any witness may be offered by any party and ~~shall~~
25 must be received in evidence, subject to objections available under
26 Code of Civil Procedure section 2025(g), notwithstanding that the
27 deponent is not "unavailable as a witness" within the meaning of
28 section 240 of the Evidence Code and no exceptional circumstances
29 exist, if:

30
31 (i) The deposition was taken in the manner provided for by law or
32 by stipulation of the parties and within the time provided for in
33 these rules; and

34
35 (ii) Not less than 20 days prior to the hearing the proponent of the
36 deposition delivered to all opposing parties notice of intention
37 to offer the deposition in evidence.

38
39 (B) The opposing party, upon receiving the notice, may subpoena the
40 deponent and, at the discretion of the arbitrator, either the deposition
41 may be excluded from evidence or the deposition may be admitted
42 and the deponent may be further cross-examined by the subpoenaing

1 party. These limitations are not applicable to a deposition admissible
2 under the terms of section 2025(u) of the Code of Civil Procedure.
3

4 (c) **[Subpoenas]**

5
6 (1) Subpoenas shall issue for The attendance of witnesses at arbitration
7 hearings may be compelled through the issuance of subpoenas as provided
8 in the Code of Civil Procedure, in section 1985 and elsewhere in part 4,
9 title 3, chapters 2 and 3. It ~~shall be~~ is the duty of the party requesting the
10 subpoena to modify the form of subpoena so as to show that the
11 appearance is before an arbitrator, and to give the time and place set for
12 the arbitration hearing.
13

14 (2) At the discretion of the arbitrator, nonappearance of a properly
15 subpoenaed witness may be a ground for an adjournment or continuance
16 of the hearing.
17

18 (3) If any witness properly served with a subpoena fails to appear at the
19 arbitration hearing or, having appeared, refuses to be sworn or to answer,
20 proceedings to compel compliance with the subpoena on penalty of
21 contempt may be had before the superior court as provided in Code of
22 Civil Procedure section 1991 for other instances of refusal to appear and
23 answer before an officer or commissioner out of court.
24

25 (d) **[Delivery of documents]** For purposes of this rule, “delivery” of a document or
26 notice may be accomplished manually or by mail in the manner provided by
27 Code of Civil Procedure section 1013. If service is by mail, the times
28 prescribed in this rule for delivery of documents, notices, and demands are
29 increased by five days.
30

31 **Rule 1614. Conduct of the hearing**

32
33 (a) **[Arbitrator’s powers]** The arbitrator ~~shall have~~ has the following powers; all
34 other questions arising out of the case are reserved to the court:
35

36 (1) To administer oaths or affirmations to witnesses;
37

38 (2) To take adjournments upon the request of a party or upon his or her own
39 initiative when deemed necessary;
40

41 (3) To permit testimony to be offered by deposition;
42

- (4) To permit evidence to be offered and introduced as provided in these rules;
- (5) To rule upon the admissibility and relevancy of evidence offered;
- (6) To invite the parties, on reasonable notice, to submit trial briefs;
- (7) To decide the law and facts of the case and make an award accordingly;
- (8) To award costs, not to exceed the statutory costs of the suit; and
- (9) To examine any site or object relevant to the case.

~~All other questions arising out of the case are reserved to the court.~~

(b) [Record of proceedings]

- (1) The arbitrator may, but is not required, to make a record of the proceedings.
- (2) Any records of the proceedings made by or at the direction of the arbitrator ~~shall be~~ are deemed the arbitrator's personal notes and are not subject to discovery, and the arbitrator ~~shall~~ must not deliver them to any party to the case or to any other person, except to an employee using the records under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury.
- (3) No other record ~~shall~~ will be made, and the arbitrator ~~shall~~ must not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by this rule.

Rule 1615. The award; entry as judgment; motion to vacate

(a) [The award; form and content]

- (1) The award ~~shall~~ must be in writing and signed by the arbitrator. It ~~shall~~ must determine all issues properly raised by the pleadings, including a determination of any damages and an award of costs if appropriate.
- (2) The arbitrator is not required to make findings of fact or conclusions of law.

(b) [Filing the award]

- 1
2 (1) Within 10 days after the conclusion of the arbitration hearing the
3 arbitrator ~~shall~~ must file the award with the clerk, with proof of service on
4 each party to the arbitration. On the arbitrator's application in cases of
5 unusual length or complexity, the court may allow up to 20 additional
6 days for the filing and service of the award.
7
8 (2) Within the time for filing the award, the arbitrator may file and serve an
9 amended award.
10

11 (c) **[Entry of award as judgment]**
12

- 13 (1) The clerk ~~shall~~ must enter the award as a judgment forthwith upon the
14 expiration of 30 days after the award is filed if no party has, during that
15 period, served and filed a request for trial as provided in these rules.
16
17 (2) Promptly upon entry of the award as a judgment the clerk ~~shall~~ must mail
18 notice of entry of judgment to all parties who have appeared in the case
19 and ~~shall~~ must execute a certificate of mailing and place it in the court's
20 file in the case.
21
22 (3) The judgment so entered ~~shall have~~ has the same force and effect in all
23 respects as, and is subject to all provisions of law relating to, a judgment
24 in a civil ~~action~~ case or proceeding, except that it is not subject to appeal
25 and it may not be attacked or set aside except as provided in ~~subdivision~~
26 (d). The judgment so entered may be enforced as if it had been rendered
27 by the court in which it is entered.
28

29 (d) **[Vacating award]**
30

- 31 (1) A party against whom a judgment is entered pursuant to an arbitration
32 award may, within six months after its entry, move to vacate the judgment
33 on the ground that the arbitrator was subject to a disqualification not
34 disclosed before the hearing and of which the arbitrator was then aware,
35 or upon one of the grounds set forth in section 473 or subdivisions (a)(1),
36 (2), and (3) of section 1286.2 of the Code of Civil Procedure, and upon no
37 other grounds.
38
39 (2) The motion ~~shall~~ must be heard upon notice to the adverse parties and to
40 the arbitrator, and may be granted only upon clear and convincing
41 evidence that the grounds alleged are true, and that the motion was made
42 as soon as practicable after the moving party learned of the existence of
43 those grounds.

1
2 **Rule 1616. Trial after arbitration**
3

- 4 (a) **[Request for trial; deadline]** Within 30 days after the arbitration award is filed
5 with the clerk of the court, a party may request a trial by filing with the clerk a
6 request for trial, with proof of service of a copy upon all other parties
7 appearing in the case. A request for trial filed after the parties have been served
8 with a copy of the award by the arbitrator, but before the award has been filed
9 with the clerk, shall be deemed valid and timely filed. The 30-day period
10 within which to request trial may not be extended.
11
- 12 (b) **[Restoring case to civil active list]** The case ~~shall~~ must be restored to the civil
13 active list for prompt disposition, in the same position on the list it would have
14 had if there had been no arbitration in the case, unless the court orders
15 otherwise for good cause.
16
- 17 (c) **[References to arbitration during trial prohibited]** The case ~~shall~~ must be
18 tried as though no arbitration proceedings had occurred. No reference may be
19 made during the trial to the arbitration award, to the fact that there had been
20 arbitration proceedings, to the evidence adduced at the arbitration hearing, or
21 to any other aspect of the arbitration proceedings, and none of the foregoing
22 may be used as affirmative evidence, or by way of impeachment, or for any
23 other purpose at the trial.
24
- 25 (d) **[Costs after trial]** In assessing costs after the trial, the court ~~shall~~ must apply
26 the standards specified in section 1141.21 of the Code of Civil Procedure.
27

28 **Rule 1617. Arbitration not pursuant to rules**
29

30 These rules do not prohibit the parties to any civil ~~action~~ case or proceeding from
31 entering into arbitration agreements pursuant to part 3, title 9 of the Code of Civil
32 Procedure. Neither the ~~administrative~~ ADR committee nor the ~~arbitration~~ ADR
33 administrator ~~shall~~ may take any part in the conduct of an arbitration under an
34 agreement not in conformity with these rules except that the administrator may,
35 upon joint request of the parties, furnish the parties to the agreement with a
36 randomly selected list of at least three names of members of the appropriate panel of
37 arbitrators.
38
39

1 **Rule 1618. Settlement of case**

2
3 If a case is settled, the ~~parties shall~~ plaintiff must notify the arbitrator and the court
4 as required in rule 225 ~~at least two court days before the arbitration hearing date or~~
5 ~~the parties shall equally compensate the arbitrator in the total sum of \$150.~~
6